

Introduction

Metropolitan Sewer Availability Charge (SAC) is required by state statute MS 473.517 subd. 3. This charge to communities (cities and other building authorities) is determined on a site by site basis and the revenue is used to pay for the “reserve capacity” built into the metropolitan wastewater system for future users (typically about 1/3 of the capital project costs of the system). This helps keep regular, volume-based, sewer fees among the lowest for metropolitan areas in the country. It also provides for the costs of wastewater demand to be borne by those communities where the service is growing and only as needed (pay-as-you-build). The SAC fee system was implemented metro-wide in 1973 and largely eliminated the market risk for communities in the building of reserve capacity into the metropolitan wastewater system. The collected metropolitan SAC fees, by law, are used only to fund the construction or betterment of the metropolitan wastewater system, an award winning system worth over a billion dollars.

SAC “credits” are a tally of regional wastewater capacity that has been ‘freed up’ within a community and which are used to offset metropolitan SAC for wastewater demand that otherwise would be charged to the community. Policies around SAC credits have changed over time. Current policy restricts metropolitan SAC credits to the site on which they are generated, and the primary request of the 2012 SAC Work Group was to determine whether to allow the re-implementation of SAC credits, where the freed up capacity is not needed on a site, for use elsewhere in a community.

2012 SAC Work Group

In early 2012 Metro Cities requested that Metropolitan Council Environmental Services (MCES), as well as various stakeholders, to revisit SAC rules regarding “net credits” for the Sewer Availability Charge (SAC) program. Metro Cities and MCES staff solicited volunteers from diverse communities to review the rules and determine if a consensus could be achieved for improvements to the rules. Additionally, the Council and Mayor of the City of St. Paul independently asked that the Council consider loans for small businesses needing to pay SAC and the City of Minneapolis asked for a review of those issues and all other MCES services and outreach related to SAC. The work group addressed all these areas.

The 2012 SAC work group met 5 times from July through October 2012 (minutes are attached). Work Group Members include:

- Gary Van Eyll, Metropolitan Council Member & Co-chair
- Patricia Nauman, Metro Cities & Co-chair
- Wendy Wulff, Metropolitan Council Member
- James Dickinson, Andover
- Robert Cockriel, Bloomington
- Amy Baldwin, Brooklyn Park
- Jon Watson, Brooklyn Park
- Brent Mareck, Carver (resigned)
- Gene Abbott, Lakeville
- Lisa Cerney, Minneapolis
- Pierre Willette, Minneapolis
- Patrick Trudgeon, Roseville
- Brian Hoffman, St. Louis Park
- Ellen Muller, St. Paul
- Jim Bloom, St. Paul

- Lorrie Louder, St. Paul Port Authority
- Jay Scherer, Savage
- Bruce Loney, Shakopee

Various meetings were also attended by:

- Mary Ubl, Minneapolis

Brief History on Current SAC Policy

After a stakeholder group discussion in 2005 and 2006, changes to the then current SAC credit policy were adopted and the SAC program went to a 'no net credit' system effective at the beginning of 2010. Prior to that time, a community could use SAC credits on a community-wide (net credit) basis. The calculation of SAC credits were based either on: i) the payment history of SAC for a property and ii) properties built before 1973 were "grand-parented" into the system, and both types were allowed to generate credits on site or net credits for use off site. Property use/demand was not taken into account in the determination of credits. In 2010, community-wide credits were disallowed and credits became limited to the amount needed on a specific site for a new use. The calculation of SAC credits are determined based on prior use over the last seven or eight years (the 'Look-Back Period').

The impetus for the 2010 changes centered on difficulties in accessing 1973 data, perceived inequity in long vacant or underused properties not paying regular sewer fees to help maintain sewer capacity, and fewer net credits taken community-wide mean more SAC paid to reduce SAC rate pressure. The changes were also proposed with the intent of making the program simpler to administer. The Council did not want to incent a de-intensification of development where infrastructure was already in place. Metro Cities convened a work group of city officials in 2006 to make recommendations and the final product had wide agreement.

Nevertheless, the SAC changes that were implemented effective January 1, 2010 have since generated numerous concerns, some stemming from impacts of the recession on businesses and restrictions on SAC credits, particularly the challenges associated with redeveloping properties and the inability to use net (community-wide) SAC credits in those efforts.

Recommendation: SAC Credits

The current work group finalized a set of recommendations which, *when SAC has been paid for a site*, in large measure represents a reversal of current policy on SAC credits to again allow for the use of credits community-wide. These changes are intended to both make the program more flexible for communities and to simplify the administrative aspects of the program for all parties (as SAC payment records are in good order and usually not controversial).

The changes proposed, which received unanimous support by the group, are as follows:

SAC paid at any time (1973-present) is sufficient evidence in generating potential SAC credits. In such cases, net credits can occur that can be used community-wide or left site-specific at the community's option (a one-time election with monthly reporting). The Look-Back Period and vacancy rules would no longer apply.

Also, non-conforming use credits (where SAC was not paid) would be available but limited. If a community shows either *grand-parented* (between 1968-1978) or *continuous demand* (property built post-1973 but did not pay SAC and has been in existence 10 years prior to the current determination)

on a site, those credits will be available to offset SAC charges, but only on that site. No community-wide (net) credits would be available.

Allowance for a *minor* SAC credit transfer (where determination is 10 SAC or less and upon request by the community) for use on a new site within a community. This would allow communities to move up to 10 credits from the former site of a business to its new site, before a new use occurs on the former site (credits generally are not available until a new use is determined on a site, and the availability of any credits is known).

The new rules would go into effect January 1, 2013 (existing rules would be enforced through January 1, 2012).

Additional Recommendation: MCES Services and Outreach

1. The group recommendations include a proposal that the MCES develop a SAC loan program, specifically to assist communities in helping small businesses where a SAC determination is 10 SAC or less. Such loans are authorized now under M.S. 473.517 subd. 6.

Under the recommendation, a community could make a request to MCES to participate in the SAC deferral loan program and execute an agreement with the Council. MCES would provide loans to the community on a case by case basis (community option) contingent on the community agreeing to pass through the loan terms to the property owner or responsible SAC party.

Under the tentative loan agreement, 20% of SAC would be due upfront and 80% deferred. Interest for the loans would be based on the Council's average rate on its wastewater bonds and new loans would be fixed at that rate. The terms of loans would be 5-10 years (at the community's option) with payments required annually. If there is a default on the loan, the site would not be credited for any SAC unpaid, but would be credited for the portion paid. No payments would be refunded. The community would have the option to complete the payments regardless of default by a property owner (and thus the full SAC credit would then be available for that property).

2. Community reviews are recommended to be limited to review of SAC activity no more than three years prior to the date of the review initiation. This would not relieve communities from paying SAC for demand where it becomes known to the community that SAC should have been paid but was not.
3. MCES is requested to provide regular training opportunities for community staff, and in the near term particularly around these new rules.
4. MCES is also requested to provide alternate language versions of the SAC brochure to help outreach to non-English speaking business owners and developers.